

EXHIBIT 1

INTRODUCTION

In 2003, Respondent Agnes Sietsema was a member of the Board of Trustees for the Winton School District (the “District”). Respondent Sietsema has been a member for the past 15 years, and remains on the Board of Trustees today. As a School Board Trustee, Respondent was a public official and therefore prohibited by Government Code section 87100 of the Political Reform Act (the “Act”)¹ from making, participating in making, or attempting to use her official position to influence any governmental decision in which she had a financial interest.

In this matter, Respondent impermissibly made two governmental decisions in which she had a financial interest. Specifically, she twice voted on matters related to the purchasing of property directly adjacent to her personal residence.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

COUNT 1: On September 8, 2003, as a member of the Board of Trustees for the District, Respondent Agnes Sietsema made a governmental decision in which she had a financial interest, by voting to approve the authorization for the District to make an offer to purchase property that was within 500 feet of her personal residence, in violation of section 87100.

COUNT 2: On November 24, 2003, as a member of the Board of Trustees for the District, Respondent Agnes Sietsema made a governmental decision in which she had a financial interest, by motioning to vote and subsequently voting in closed session for the District to send a second offer to purchase property that was within 500 feet of her personal residence, in violation of section 87100.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code unless otherwise indicated. The regulations of the Fair Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

SUMMARY OF THE LAW

The primary purpose for the conflict-of-interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subdivision (b))

In furtherance of this goal, section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. Under section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.²

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include a member of a local governmental agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under regulation 18702.1, subdivision (a), a public official “makes a governmental decision” when the official votes on a matter, obligates his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.

Third, the official must have an economic interest that may be financially affected by the governmental decision. Under section 87103, subdivision (b), a public official has a financial interest in any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. Pursuant to section 82035, real property is deemed to be within the jurisdiction with respect to a local government agency if the property, or any part of the property, is located within or not more than two miles outside of the boundaries of the jurisdiction, or within two miles of any land owned or used by the local governmental agency.

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Under regulation 18704.2, subdivision (a)(1), real property in which a public official has an economic interest is directly involved in a governmental decision if the real property in which the official has an interest, or any part of that real property is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision. Under regulation 18704.2, subdivision (b), if the real property is “directly involved” in a governmental decision, the materiality standards in regulation 18705.2, subdivision (a) apply.

² As set forth in regulations 18700 through 18708, the Commission has established an eight-step analysis for determining whether a public official has a conflict-of-interest in a governmental decision. The last two steps of the analysis are exceptions that allow a public official to participate in governmental decisions even though the official may have a conflict-of-interest. The two exceptions are not relevant to this matter.

Fifth, under regulation 18705.2, subdivision (a), any reasonably foreseeable financial effect on real property in which a public official has an economic interest, and in which real property is “directly involved” in a decision before the official’s agency, is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision.

Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends on the facts of each particular case. An effect of a decision on real property is considered “reasonably foreseeable” if there is a substantial likelihood that it will affect property values, either positively or negatively, or will alter or change the use of the property in some manner. Certainty of the effect is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.)³

SUMMARY OF THE FACTS

Respondent Agnes Sietsema has been a member of the Board of Trustees for 15 years. Her professional experience is as a teacher and an administrator. She has no other experience in public office. Respondent Sietsema and her husband have a personal residence (the “Sietsema property”) on one half acre that they have owned since 1958.

The District was looking for a property on which to construct a new school. Due to traffic concerns, the locations of other schools in the District, and the locations of recent development within the District’s boundaries, the District began to look for properties in the neighborhood where the Sietsema property is located. A realtor working on behalf of the District identified the property owned by the Gordons, (the “Gordon property”), as a potentially suitable site due to (1) the location of the property within the center of the District’s boundaries and (2) the fact that the property supported agriculture (an orchard) and minimal development (three residences). Additionally, the property is located on a corner, which is almost always necessary in order to comply with state guidelines for bus service. The Gordon property is adjacent to, and within 500 feet of, the Sietsema property.

As set forth below, Respondent Agnes Sietsema made or participated in two

³The *Thorner* opinion was codified in regulation 18706 to provide that a material financial effect on an economic interest is reasonably foreseeable, within the meaning of section 87103, if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision.

governmental decisions involving the Gordon property and therefore violated section 87100 of the Act.

COUNTS 1-2

MAKING A GOVERNMENTAL DECISION IN WHICH THE OFFICIAL HAS A FINANCIAL INTEREST

1. Respondent Was a Public Official as Defined by the Act

As a member of the Board of Trustees for the District, on September 8, 2003 and November 24, 2003, Respondent was a public official as defined in section 82048, and was therefore subject to the prohibition against making a decision in which she has a financial interest under section 87100.

2. Respondent Made Governmental Decisions

At the September 8, 2003 District board meeting, Respondent voted to approve an authorization for the District to make an offer to purchase the Gordon property. Respondent Agnes Sietsema made the motion to approve the authorization and voted on the motion, which was approved by a 4-0 vote. During the November 24, 2003 District board meeting, in closed session, the Board of Trustees voted to approve the District making a second offer to purchase the Gordon property. Respondent Agnes Sietsema made the motion to approve a second offer and voted on the motion, which was approved by a 5-0 vote. Consequently, Respondent made two governmental decisions for purposes of Regulation 18702.1 subdivision (a).

3. Respondent Had an Economic Interest in Real Property

At the time of the governmental decisions, Respondent and her husband owned their personal residence in Winton, California. As the residence is worth \$2000 or more, Respondent had an economic interest in her personal residence for the purposes of section 87103, subdivision (b).

4. Respondent's Economic Interest Was Directly Involved in the Decision

Respondent's personal residence is within 500 feet of the Gordon property. Therefore, the governmental decisions made on September 8, 2003 and November 24, 2003 to make offers to purchase the Gordon property for construction of a new school, directly involved Respondent Sietsema's economic interest in her personal residence under Regulation 18704.2(a)(1).

5. Applicable Materiality Standard

Because Respondent's personal residence was directly involved in the two governmental decisions, any financial effect of the decisions on her economic interest in her personal residence is presumed to be material. (Regulation 18705.2(a)(1))

6. It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

Respondent's governmental decisions on September 8, 2003 and November 24, 2003 concerned the purchase of the Gordon property for construction of a new school. It was reasonably foreseeable at the time the decisions were made that Respondent's decisions to approve the offers to purchase the Gordon property would have at least some financial effect on her personal residence which is located next to and within 500 feet of the Gordon property.

By making two governmental decisions in which she had a financial interest, Respondent violated section 87100 of the Act.

Conclusion

This matter consists of two counts of violating the Act carrying a maximum administrative penalty of \$5,000 per violation for a total of \$10,000.

Participating in a governmental decision in which an official has a financial interest is one of the more serious violations of the Act as it creates the appearance that a governmental decision was made on the basis of an official's financial interest. The typical administrative penalty for a conflict-of-interest violation, depending on the facts of the case, has been in the mid-to-high range of available penalties.

As a long term school board member, Respondent should have known that the two decisions in which she participated were clearly in violation of the conflict-of-interest provisions of the Act. Respondent is still a member of the school board. However, Respondent did recuse herself from voting on further actions concerning the Gordon property after she was confronted about the potential of a conflict-of-interest. Additionally, the property involved in the decisions was never purchased by the School District. Therefore, the facts of this case justify the imposition of a total administrative penalty of \$7,000.